



POLICE DEPARTMENT

October 28, 2014

MEMORANDUM FOR: Police Commissioner

Re: Detective Eric Cox
Tax Registry No. 926711
Narcotics Borough Brooklyn South
Disciplinary Case No. 2013-9655

Detective Phillip Atkins
Tax Registry No. 924903
Narcotics Division
Disciplinary Case No. 2013-9656

The above-named members of the Department appeared before me on April 3 and June 5, 2014, charged with the following:

Disciplinary Case No. 2013-9655

1. Said Detective Eric Cox, assigned to the Narcotics Borough Brooklyn South, while on duty on or about February 26, 2012, at approximately 1955 hours, in the vicinity of [REDACTED], Kings County, abused his authority as a member of the New York City Police Department in that he stopped Bernard Harry without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 1 – STOP AND FRISK

2. Said Detective Eric Cox, assigned to the Narcotics Borough Brooklyn South, while on duty on or about February 26, 2012, at approximately 1955 hours, in the vicinity of [REDACTED], Kings County, abused his authority as a member of the New York City Police Department in that he stopped Ulric Bartholomew without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 1 – STOP AND FRISK

Disciplinary Case No. 2013 9656

1. Said Detective Phillip Atkins, assigned to the Narcotics Borough Brooklyn South, while on duty on or about February 26, 2012, at approximately 1955 hours, in the vicinity of [REDACTED], Kings County, abused his authority as a member of the New York City Police Department, in that he searched Bernard Harry without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 3 - STOP AND FRISK

The Civilian Complaint Review Board (CCRB) was represented by Paul Scotti, Esq., Respondents [REDACTED] and Atkins were both represented by James Moschella, Esq.

Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

[REDACTED]

Respondent [REDACTED] is found Not Guilty.

Disciplinary Case No. 2013-9656

Respondent Atkins is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on February 26, 2012, Respondent Cox and Respondent Atkins were on duty, dressed in plain clothes, assigned to Narcotics Borough Brooklyn South (NBBS), conducting observations at a narcotics traffic target area: the intersection of [REDACTED] t and [REDACTED], Brooklyn [CCRB Exhibit (CCRBX) 2].

Respondent Atkins was driving their unmarked Hyundai Sonata and Respondent Cox was seated in the front passenger seat. At about 1955 hours, in the vicinity of [REDACTED] [REDACTED] Brooklyn, Respondent Cox and Respondent Atkins exited their vehicle and stopped Bernard Harry and Ulric Bartholomew who were walking together on the sidewalk in front of [REDACTED] (CCRBX 1).

CCRB's Case

CCRB called Bernard Harry and Ulric Bartholomew as witnesses.

Bernard Harry

Harry, who is 55-years-old and has resided at [REDACTED], [REDACTED] for over 20 years, testified that he has never been convicted of a crime and that prior to February 26, 2012, he had never filed a CCRB complaint against a police officer. Ulric Bartholomew, who likes to be called Gus, is Harry's neighbor. They have known each other for 15 years. Harry recalled that on February 26, 2012, he was walking home from work carrying a plastic bag that contained his caulking gun and his dry wall taping knife. As Harry crossed [REDACTED] on the opposite side of [REDACTED] he saw Bartholomew walking towards [REDACTED]. Harry then crossed over the street to meet Bartholomew. Bartholomew told Harry that he was walking to a store to buy cigarettes. Harry told Bartholomew that he had cigarettes and that he would give him a cigarette. Harry reached into his pocket, took out a cigarette and handed it to Bartholomew. Bartholomew then lit the cigarette. Then they both started to walk up [REDACTED] toward their homes.

When they were only a short distance from the front of Bartholomew's home, Harry heard a voice say, "Police." When Harry turned around, Respondent Atkins was standing right in front of him. Harry's hands were at his side and he did not raise his hands towards Respondent Atkins. Respondent Atkins touched Harry's waist with his hands and then patted the outside of Harry's body from his chest area to his waist area with open palms. Harry asked Respondent Atkins, "Who are you? What are you doing?" Respondent Atkins told him "Shut the fuck up." Harry repeated his two questions. Respondent Atkins slapped his face and again told him, "Shut the fuck up." Respondent Atkins then tried to hit him on his mouth. Harry testified, "Next thing I know, he's punching and he's kicking, but 'cause he's short, he's using his knees. So I keep going back, you know, because it's the force he's acting with, I have no choice but to go back because he's using the force, he using his knees, he's punching into my stomach using his knees." Harry testified that he was up against a fence with his back against the fence. Respondent Atkins put his hands under Harry's chin causing the back of Harry's head to hit the wall. Harry heard Respondent Atkins say, "Motherfucker, I shoot you. I have two guns and the other one is yours."

Harry heard his mother's voice screaming, "What are you doing to my son? What happened?" Respondent Atkins put back his gun on Respondent Atkins' side and said, "Don't move." Respondent Atkins then went over to where Harry's mother was standing. When Respondent Atkins came back to Harry, he told Harry to turn around and put his hands behind his back. Harry asked why he was being handcuffed but complied. Respondent Atkins took Harry's bag containing his tools and started pushing his hands into Harry's pocket. Harry was placed inside a car. When Harry appeared before a judge,

the charges against him were dismissed and sealed. Harry has filed a civil law suit regarding this incident that is still pending.

On cross-examination, Harry recalled filing a complaint with CCRB via telephone a couple of days after this incident took place. Harry went down to CCRB a week or so after the telephone interview to give a statement. Harry agreed that his conversation with Bartholomew, the exchange of the cigarette, and the start of them walking together all took place in "a couple of seconds." Harry confirmed that he has been stopped previously by police but not in the same area that he was stopped on February 26, 2012. Harry confirmed that when Respondent Atkins stopped him he had his bag in his hand which contained a taping knife and a caulking gun. Harry testified that when he heard "police" and turned around, Respondent Atkins touched his waist before Harry had said anything to Respondent Atkins.

Harry was confronted with a statement he made to a CCRB investigator during a tape-recorded telephone interview on February 29, 2012, during which he stated that he had told the approaching officers, "I'm going home. I live right down there because it's two houses away from - I'm going home. I said, 'What's the problem?' I said, 'You tell me you're the police and you don't show no badge or nothing.' I said, 'What's the problem' you know? 'Why you stop us?'" When Harry was asked if he had said that to CCRB about the incident, Harry testified that he had no recollection of having made that statement and that perhaps he had not understood what they were asking him on the phone. Harry testified that he did not say anything to Respondent Atkins until after Respondent Atkins starting patting his waist area and that he had then asked him "Who are you? What are you doing?" When Harry was asked if he had told CCRB that the

first thing that the officer did was pat him down, Harry replied, "Maybe they never asked."

On re-direct examination, Harry was asked about an in person CCRB interview that took place on March 6, 2012. At that interview, Harry stated that the officer who came over to him "started to feel my pockets, and I asked him, I said, 'Why you feel my pockets? ...I would like to know why you stopped me.' He did not answer me. I asked again."

On re-cross examination, Harry was asked why he had not previously told CCRB investigators that Respondent Atkins had patted him down. Harry responded, "Maybe I didn't think that's important. But the first thing...when I turned around and I saw Detective Atkins, and I didn't even know it was Detective Atkins, all I know is somebody is patting my waist." Harry was asked if during this encounter he was asked to open his hand. Harry answered that his hands were never closed and he was not asked to open his hand. Harry was unsure in which hand he was holding his bag.

Ulric Bartholomew

Bartholomew, who is 47-years-old, recalled that he has known Harry for 15 years. Bartholomew confirmed that was convicted of theft of services for jumping a turnstile in 2003 and that he was also convicted of criminal contempt in 2001. Prior to February 26, 2012, he had never filed a complaint against a police officer.

On February 26, 2012, he was walking down [REDACTED] going to a store to buy cigarettes. As Bartholomew reached [REDACTED], he saw Harry crossing the street. Harry asked Bartholomew where he was going and Bartholomew replied that he was

going to buy some cigarettes. Harry said, "I got some." Harry pulled out a pack and handed it to Bartholomew. Bartholomew took two cigarettes out of the pack.

Bartholomew lit one cigarette and put the other one in his shirt pocket. He handed the pack back to Harry and they turned around and started walking together back up the block toward Bartholomew's house.

As they reached the front of his house, he saw two plain clothed police officers jump out of a car and say, "Don't move." Bartholomew stopped walking. The taller of the two officers approached Bartholomew and the shorter one approached Harry. Bartholomew put his hands up, palms out and asked, "What's the problem?" The taller officer asked him where the drugs were. Bartholomew told him that he did not sell drugs. The officer started searching him. The officer took keys from his pocket and patted him down using his hands. Bartholomew heard Harry asking the shorter officer why he was harassing him since he did not sell drugs and he did not have gun. The shorter officer then hit Harry on his face and slammed him against a fence. Harry was then placed in handcuffs and arrested.

On cross-examination, Bartholomew confirmed that when he and Harry happened to meet that day they were walking in opposite directions. He agreed that their conversation took about a minute. Bartholomew did not see the shorter officer pull out a gun or threaten to shoot Harry. Bartholomew did see the shorter officer search Harry's pockets and take out all his belongs after Harry was handcuffed. Harry was crying. Harry's mother asked the officers, "Why you hitting my son? Why you locking him up?" After Harry was handcuffed, he was placed inside the officers' car.

Respondents' Case

Respondent Cox and Respondent Atkins each testified in his own behalf.

Respondent Cox

Respondent Cox, who is a 13-year member of the Department, recalled that on February 26, 2012, he observed a man, whose last name he later learned was Harry, pass an object to another man, whose last name he later learned was Bartholomew. He could not tell what the object was. Respondent Cox told Respondent Atkins that he believed that he had just seen a hand-to-hand drug transaction taking place. Respondent Atkins stopped their vehicle. Respondent Cox got out first, approached the two men and announced that he was a police officer. Respondent Cox stated that his intention was to question the two men in order to find out what they had passed between them. Respondent Atkins quickly joined him on the sidewalk. Respondent Cox did not put his hands on Bartholomew.

As Respondent Cox started to ask Bartholomew what had been exchanged, he heard a commotion behind him. He turned around and saw that Respondent Atkins and Harry were engaged in a struggle. Harry was pulling away from Respondent Atkins who was telling Harry to give him his hands. Harry was loudly demanding to know, "Why you stopping me? Why the fuck are you stopping me?" Respondent Cox then helped Respondent Atkins get control of Harry by grabbing one of Harry's arms as Respondent Atkins grabbed Harry's other arm. Respondent Cox handcuffed Harry. Up to that point, Respondent Cox had not seen Respondent Atkins pat down or frisk Harry. Respondent Cox saw that about six or more people had gathered behind them. Respondent Cox heard

some of them saying, "What are you doing? Why [are] you locking him up?" At that point, Respondents decided to remove Harry from the scene.

On cross examination, Respondent Cox testified that even though it was dark out when he observed the exchange between Harry and Bartholomew, lighting from nearby stores and streetlights illuminated the scene. Respondent Cox agreed that he would not stop someone on the street merely because the person was present at a drug-prone location. Respondent Cox confirmed that after the exchange, Harry and Bartholomew did not go their separate ways but instead turned around and began walking together. Respondent Cox asserted that the manner in which the object had been exchanged had also aroused his suspicion that this was possibly a drug sale. Respondent Cox agreed that at the point when he approached Harry and Bartholomew, they were not free to leave. He did not see Harry holding anything. Respondent Cox did not hear Respondent Atkins tell Harry to put down a knife. Respondent Cox did not see Harry with a knife in his hand, only a plastic bag.

On redirect examination, Respondent Cox testified that he has conducted over one hundred narcotics observations and that his suspicion that this was a drug sale had been aroused by the fact that Harry and Bartholomew had approached each other from separate directions; by the fact that he did not see them shake hands or high five each other; and by the fact that numerous drug transactions have taken place at the location where they met. Respondent Cox indicated that these factors entered into his decision to stop and question Harry and Bartholomew and to ascertain what had been passed between them, but he was unable to finish questioning Bartholomew because of the commotion that took place between Harry and Respondent Atkins. He further added that the parties in a drug

transaction will sometimes "walk away [together] to make it look like they know each other so they won't arouse no suspicion."

Respondent Atkins

Respondent Atkins, a 14-year member Department, recalled that on February 26, 2012, Respondent Cox told him that a hand-to-hand drug transaction may have just taken place on the corner. When Respondent Atkins looked over, he saw two men standing together for a second before they turned and started walking together northbound on [REDACTED]. He and Respondent Cox decided to stop the subjects because it could have been a drug transaction. Respondent Atkins testified that it was his intention to stop the two men and inquire as to what had transpired between them on the corner. Respondent Atkins pulled their car alongside the men and stopped. Respondent Cox exited the vehicle first. Five seconds later, Respondent Atkins exited the vehicle. Respondent Cox asked the two subjects to stop. Respondent Cox approached Bartholomew and stood directly in front of him talking to him. Respondent Atkins heard Respondent Cox ask Bartholomew to let him see his hands.

Respondent Atkins approached Harry. Harry became very agitated and belligerent. He started cursing, saying "Why the fuck did you stop me? I'm going to my fucking house. You are not fucking stopping me." Respondent Atkins asked Harry to calm down and told Harry that he was just conducting an investigation as to what had happened on the corner. When Harry attempted to walk past Respondent Atkins, he placed his hand on Harry's torso and told Harry to hold on one second and let him finish his investigation and then he would be free to leave. Harry was holding in his left hand

an object wrapped in a white plastic bag and also a "five or six inch putty knife." When Respondent Atkins put his hands on Harry's torso as Harry tried to push past him, Harry raised his hand and at that point Respondent Atkins first noticed the putty knife.

Respondent Atkins stated that the putty knife was near his face so he pulled himself back a little bit and he pushed Harry backwards and told him, "Hold on one second. Can you drop that, please if you don't mind?" Respondent Atkins testified that he was startled because he did not realize that Harry had a putty knife. Respondent Atkins recognized it as a putty knife that is used for taping with a blade that is sharp enough that it can cut something or someone.

Respondent Atkins testified that he asked Harry to put the objects he had in his hand on the ground because he was concerned that the knife could be used against him or his partner. Up to that point, Respondent Atkins had not patted down Harry. Harry told Respondent Atkins, "I'm going to my fucking house." Respondent Atkins testified that as Harry said that, Harry tried to walk past Respondent Atkins in a manner that was almost as if Harry was trying to walk through him. At that point, Respondent Atkins put his hand in front of Harry and told Harry to hold on because he needed to talk to him for a minute. Respondent Atkins also told him that if he calmed down he would be going about his business in a minute. Respondent Atkins denied that he touched Harry's pockets or Harry's waistband or any part of Harry's clothing at that point.

Respondent Atkins told Harry to put down the putty knife more than once. Because Harry refused and proceeded to come at Respondent Atkins while holding the putty knife up, Respondent Atkins used an open palm to tap Harry's upper chest hitting

him under his chin and pushing him back into the fence line. Respondent Atkins then disarmed Harry and the objects that Harry held were knocked down to the ground.

Respondent Atkins noticed that eight to ten civilians had gathered and were starting to make comments about them stopping Harry. Respondent Atkins made a decision to place Harry under arrest. Harry came at Respondent Atkins a second time and Respondent Atkins pushed Harry back. Harry went at Respondent Atkins a third time and so Respondent Atkins placed Harry under arrest. Respondent Atkins testified that he wanted to at least get Harry in handcuffs and get him out of the area. Respondent Atkins was thinking of charging Harry with Disorderly Conduct. Respondent Atkins searched Harry only after he was placed in handcuffs.

On cross-examination, Respondent Atkins confirmed that he did not personally see any exchange between Harry and Bartholomew but since Respondent Cox had told him that he had seen something pass between the two men, he wanted to stop the two men. Respondent Atkins testified that at the point in time when he and Respondent Cox approached the two men, the men were free to leave. However, Respondent Atkins then stated that they would be free to leave "if they didn't have anything on them. If there was no product found, they were free to leave, yes." When Respondent Atkins was asked, "Basically, they weren't free to leave until they can prove to you that they didn't have drugs on them?" Respondent Atkins answered, "Yes, sir." When Respondent Atkins was then asked, "When you first got out of the car, it's fair to say they weren't free to leave?" Respondent Atkins answered, "Yes, sir."

Respondent Atkins testified that the reason he wanted Harry to open up his hand was because he was conducting an investigation to see if a drug sale had taken place and

Respondent Atkins wanted to see if Harry had drugs in his hand. Respondent Atkins requested that Harry open his hand several times.

As soon as Respondent Atkins got out of the car and approached him, Harry started screaming. Respondent Atkins agreed Harry's behavior was irate. At some point, Respondent Atkins noticed that Harry had something in his other hand and that is when he realized that it was a putty knife. Respondent Atkins asserted that Harry had stepped toward him and that he had stepped back because he had noticed there was a putty knife near his face. Respondent Atkins asked Harry to put the knife down.

Respondent Atkins testified that the putty knife could have been used as a weapon but that he did not necessarily think he was under attack because Harry did not lunge at him. Respondent Atkins admitted that in his memo book entry he wrote that he had defended himself against Harry's attack.

Respondent Atkins asserted that Harry was intoxicated during their encounter but he acknowledged that on the online arrest form under the section denoting the arrestee's physical condition the words "apparently normal" are entered. Harry was removed from the scene right away because a group of people gathered and some of those people included Harry's family members. Respondent Atkins testified that he did not recover the putty knife that he said was used against him. He did agree that the knife could have been used as evidence. Respondent Atkins admitted that he did not find any drugs on Harry after he was arrested. Respondent Atkins did not call for 10-85 for assistance and never called for additional units to the location. Respondent Atkins charged Harry with disorderly conduct and obstruction of governmental administration.

FINDINGS AND ANALYSIS

Disciplinary Case No. 2013-9655

Specification Nos. 1 and 2

It is charged that Respondent Cox abused his authority by stopping Harry and Bartholomew in the vicinity of [REDACTED] without sufficient legal authority.

Patrol Guide Procedure 212-11 "Stop and Frisk," states that "when a uniformed member of the service reasonably suspects a person has committed, is committing or is about to commit a felony or a Penal Law misdemeanor," the uniformed member of the service (UMOS) may lawfully "stop person and request identification and explanation of conduct."¹

Patrol Guide Procedure 212-11 also lists "some factors which contribute to reasonable suspicion" and these factors include the demeanor of the suspect; the gait and manner of the suspect; and the particular streets and areas involved.²

I find Respondent Cox Not Guilty because he articulated specific objective facts which correspond to the categories which are cited in Patrol Guide Procedure 212-11 as factors which are relevant in reaching a determination that reasonable suspicion exists to engage in a stop.

Respondent Cox's testimony that he observed a hand-to-hand exchange of an object on the street between Harry and Bartholomew was directly corroborated by Harry and Bartholomew who both testified that they had engaged in a hand-to-hand exchange on the street. Bartholomew specifically testified that although he and Harry had been

¹ Patrol Guide Procedure No. 212-11(1).

² Patrol Guide Procedure No. 212-11 ADDITIONAL DATA.

walking in opposite directions, when they came together, Harry removed a cigarette pack from his pocket and handed it to Bartholomew, that he took two cigarettes out of the pack, put one into his shirt pocket and then handed the pack back to Harry. Also, Harry confirmed that his conversation with Bartholomew, the cigarette exchange, and the point in time when they started walking away together down the street all took place very quickly, a signature marker of a street drug transaction since any post-exchange lingering by the seller or the buyer could result in police detection.

Bartholomew also testified that after this hand-to-hand exchange took place, since he no longer needed to go to the store he had been walking toward, he reversed direction and started walking with Harry in the opposite direction from where he had been originally headed. Respondent Cox offered undisputed testimony, based on his experience in conducting numerous surveillances of drug transactions, that after a drug sale has taken place the buyer and seller sometimes walk away together so as not to arouse police suspicion.

When Bartholomew's reversal of direction is viewed in combination with the brief conversation and hand-to-hand exchange which took place between Harry and Bartholomew in an area known for drug transactions, I find that Respondent Cox had sufficient reasonable suspicion to stop and question both Harry and Bartholomew because their actions were consistent with the actions of two men who had just engaged in a drug transaction.

Since the Administrative Prosecutor failed to meet his burden of proving that Respondent Cox abused his authority by stopping Harry and Bartholomew without sufficient legal authority, Respondent Cox is found Not Guilty.

Disciplinary Case No. 2013-9656

It is charged that Respondent Atkins abused his authority in that he “searched” Harry without sufficient legal authority.

The Administrative Prosecutor’s argument that Respondent Atkins “searched” Harry by directing Harry to open his closed hand

The charge cites to Patrol Guide Procedure 212-11 “Stop and Frisk.” Since this Patrol Guide Procedure defines “search” as “to place hands inside pocket or other interior parts of clothing to determine if object felt is a weapon,”³ Respondent Atkins had the right to assume that the only searching action he was being accused of engaging in consisted of placing his hands inside Harry’s pockets or other interior parts of Harry’s clothing. However, in his opening statement and in his closing summation the Administrative Prosecutor argued that Respondent Atkins’ should be found guilty of having “searched” Harry because he directed Harry to open his closed hand. The Administrative Prosecutor argued that Respondent Atkins’ action of requesting that Harry open his hand and show what was in his hand “was in effect a search” and that it was “the same as if he had asked Bernard Harry to empty his pockets, or if he had asked him to open his bag and empty his bag.”

The Administrative Prosecutor did not provide Respondent Atkins with a Bill of Particulars to place Respondent Atkins on notice that it was CCRB’s contention that the term “search” in the charge included an action by Respondent Atkins that is not

³ Patrol Guide Procedure No. 212-11, DEFINITIONS.

mentioned in the definition of “search” that is contained in the Patrol Guide Procedure that the Administrative Prosecutor cited to.

However, I need not determine whether the Administrative Prosecutor’s failure to provide Respondent Atkins with such notice constitutes a violation of Respondent Atkins’ due process right to notice which is sufficiently specific to allow for the preparation of an adequate defense,⁴ because I reject the Administrative Prosecutor’s position.

It is not disputed that when Respondent Atkins approached Harry, one of Harry’s hands was closed. Respondent Atkins testified that it appeared to him that Harry was cupping something in his closed hand and so he asked Harry to open his hand and show him what was in his hand, which Harry did.

I cannot subscribe to the Administrative Prosecutor’s position that this verbal request constituted misconduct. Street stops are inherently fraught with potential danger and a UMOS conducting a street stop which entails standing directly in front of a suspect without benefit of any cover has the right to take reasonable precautions to insure his and his partner’s safety.

Thus, although the Administrative Prosecutor cited an appellate decision which suppressed evidence which was discovered in a suspect’s hand after a UMOS ordered the suspect to open his hand, I find that Respondent Atkins’ minimally intrusive action of requesting that Harry open his hand so that he could see what he was holding does not rise to the level of actionable misconduct.

⁴ See Wolfe v. Kelly, 79 AD3d 406, 911 NYS2d 362, App. Div. LEXIS 8957 (1st Dept 2010) and the cases cited therein.

Respondent Atkins' testimonial admissions

Notwithstanding the above analysis, I find that Respondent Atkins searched Harry without sufficient legal authority based on Respondent Atkins' testimony at this trial.

Respondent Atkins initially testified that at the point in time when he and Respondent Cox approached Harry and Bartholomew, the men were free to leave. However, Respondent Atkins later admitted that when Harry attempted to walk past him, he placed his hands on Harry's torso and told Harry to hold on one second and let him finish his investigation and then he would be free to leave. A person who has been stopped by a police officer need not respond to questions and if the person attempts to leave, the officer may not, absent probable cause, seize or search the person.⁵ Since Respondent Atkins confirmed that he did not personally see anything exchanged between Harry and Bartholomew and since he testified that Respondent Cox had only told him that he had seen some object pass between the two men but he did not know what had been passed, Respondent Atkins did not have probable cause and he had no legal basis to do anything more than to stop and question Harry.

Most significantly, on cross-examination Respondent Atkins further qualified his initial testimony by stating that Harry and Bartholomew would be free to leave "if they didn't have anything on them. If there was no product found, they were free to leave, yes." Respondent Atkins was then asked, "Basically, they weren't free to leave until they can prove to you that they didn't have drugs on them?" Respondent Atkins answered, "Yes, sir." Since the only way that Respondent Atkins could be certain that Harry did not have any drugs on him was to search Harry's pockets, I find that Respondent Atkins did so.

⁵ People v. Howard, 50 NY2d 583, 430 NYS2d 578 (1980).

Based on Respondent Atkins' above-cited testimony, I reject Respondent Atkins' assertion that he did not handcuff Harry in order to search him but because he truly believed that Harry had committed Disorderly Conduct. I also reject Respondent Atkins' testimonial claim that Harry's putty knife, which Respondent Atkins did not bother to recover, posed a danger to him and his partner. Respondent Atkins' testimony regarding these two matters appears contrived to justify his own improper action of searching Harry. Therefore, I find that Respondent abused his authority by searching Harry without having a sufficient legal basis to do so.

Based on the above, Respondent Atkins is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent Atkins's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent Atkins was appointed to the Department on March 1, 2000. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

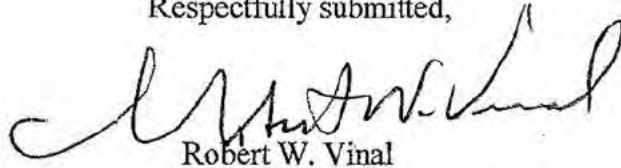
Respondent Atkins has been found Guilty of abusing his authority by searching a civilian without sufficient legal authority. The Administrative Prosecutor recommended that Respondent Atkins forfeit 15 vacation days as a penalty.

In determining a penalty recommendation I have taken into consideration that Respondent Atkins is 14-year member who has no prior formal disciplinary record; consistently excellent performance evaluations; a highly impressive Department

Recognition Summary; and who has reported sick only once during his 14 years of service.

It is recommended that Respondent Atkins receive a reprimand as his penalty in this case.

Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner – Trials

APPROVED

DEC 19 2014

WILLIAM X. BRATTON
POLICE COMMISSIONER

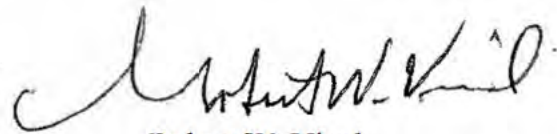
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE PHILLIP ATKINS
TAX REGISTRY NO. 924903
DISCIPLINARY CASE NO. 2013-9656

Respondent received an overall rating of 4.5 on his 2013-2014 performance evaluation, 4.5 on his 2012-2013 evaluation, and 5.0 on his 2011-2012 evaluation. He has been awarded two Commendations, 15 Meritorious Police Duty medals and 13 Excellent Police Duty medals. [REDACTED] He has no prior disciplinary record.

He has monitoring records. He was placed on Level 1 Force Monitoring from Jan. 3, 2005 until July 7, 2007 for accumulating three or more CCRB complaints within a one year period; He was again placed on Level 1 Force Monitoring from May 15, 2008 until May 17, 2010 for accumulating three or more CCRB complaints within a year; and he was placed on Level 2 Force Monitoring on May 17, 2010 for accumulating three or more CCRB complaints within one year. This Level 2 Force Monitoring has not ended.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner Trials